



Strong banks – strong Australia

16 May 2016

Ms Brooke Stewart
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Australian Securities and Investments Commission
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Dear Ms Stewart

Consultation Paper 254 – Regulating digital financial product advice

The Australian Bankers' Association (**ABA**) welcomes the opportunity to provide comments on the ASIC *Consultation Paper 254: Regulating digital financial product advice* (**Consultation Paper**).

With the active participation of 23 member banks in Australia, the ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services. The ABA works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry.

Key remarks

The banking industry is committed to enhancing the accessibility and affordability of financial advice. The provision of financial advice through non-traditional channels (ie by using digital platforms or tools to generate advice) is a key way in which financial advice can be made more accessible and affordable. It also provides consumers with greater choice in the way in which they engage and interact with banks and banking products. Its popularity has seen it grow rapidly and consumer demand for choice in how advice is delivered should see growth continue.

The ABA welcomes ASIC's comments that it supports the development of a healthy and robust digital advice market and agree that this has the potential to offer convenient and low-cost advice to clients.

We welcome and support the proposed Regulatory Guide (**guidance**) as we consider it will provide certainty for the sector in using this channel. We also acknowledge and support ASIC's view that the law should be technology neutral and that the legal obligations which apply to the provision of traditional (ie non-digital) financial product advice and digital advice should be the same. To that end we consider that care needs to be taken so that the guidance does not create an unintended uneven playing field between the two forms of advice. This is important as there can be a cross-over of channels used (ie using a digital platform or tool to generate advice or using both an adviser and a digital tool to generate advice). The guidance should guard against more prescription than currently exists in the non-digital advice space.

The Consultation Paper poses a number of questions. Responses to the questions are set out at Attachment A. High level comments are set out below.

Scaled advice – and best interests duty

The ABA agrees that the ability to provide scaled personal advice, which applies to traditional financial product advice, should also apply to digital advice. The advice must also be in the best interests of the client irrespective of the channel used. The challenge is how guidance can be drafted in a workable



sense to ensure that digital advice can also be scaled or tailored to the individual client and ensure that the best interests of the client have been met.

In traditional financial product advice human advisors can limit or tailor the scope of their advice (that is scale the advice) through conversations with their clients. This ensures that clients can get the advice that suits their needs at that particular time. In relation to digital advice there may not be any human interaction so scoping occurs through choices or information presented, responses/selections by the client, and exclusion of subject matter that is not part of the scope.

Our Members consider the guidance in section D is appropriately principles based and we consider there should not be any more prescription. We consider some examples may be useful but only if the examples do not give rise to different obligations for digital advice as there needs to be consistent treatment of both non-digital and digital advice.

Organisational competence obligation – responsible manager training requirements

The guidance requires a digital advice licensee to have at least one responsible manager who meets the minimum training and competence standards for advisors.

Under the guidance the responsible manager must also meet the proposed new professional standards¹, should they become law, including:

- Training and competency standards – ie have a degree or equivalent, pass an exam, complete a professional year, and undertake continuing professional development, and
- Complying with the proposed ethical standards – ie code of ethics and be covered by an approved compliance scheme.

We do note that the proposed guidance contains different obligations for responsible managers in the digital advice space than existing obligations under RG105. For example, under RG105 responsible managers do not themselves need to be ‘active’ advisors. Accordingly, our members have advised that responsible managers within their organisations are often not themselves advisors (active or otherwise) but rather have oversight of the business.

As we consider the law should be neutral as it applies to both non-digital and digital advice we recommend that these standards be aligned.

We do, however, agree that there should be ‘a person’ within the licensee who has responsibility for overseeing the delivery of the digital advice who must meet the adviser training and competency standards and this would be equivalent to what happens in a non-digital advice model.²

In relation to the proposed transition period, our Members also consider that 6 months is too short to meet the new professional standards (draft legislation) given training will need to take place. We consider 6 months is an appropriate timeframe to recruit a person who meets the training and competency standard (16(c)) but not enough time to train an existing employee to meet the standards. We suggest 12-18 months is a more reasonable time frame.

Monitoring and testing algorithms

We do not consider there should be more detail in the guidance in respect of the ways in which digital advice licensees should monitor and test algorithms. More prescription could pose a barrier to innovation in this area. We consider that the nature of monitoring and testing should be flexible/scalable and take a risk based approach.

¹ Through changes proposed in the Corporations Amendment (Professional Standards of Financial Advisers) Bill 2015.

² As noted at Paragraphs RG 000.70 and 000.101, existing expectations for AFS licensees providing traditional financial product advice include that a sample of advice is reviewed by a human adviser for compliance with the law. The expectation is that a human adviser should also review a sample of the digital advice provided.



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In respect of paragraph RG 000.69, which deals with expectations and ways in which licensees should monitor and test algorithms, our members request clarification as to what 'reconstruct' means in terms of the requirement to reconstruct any changes to algorithms over a seven-year timeframe.

We agree that licensees must keep records that describe any changes made to the algorithm with a particular focus on the output produced (advice provided) by the platform/tool. Those records should explain the effect of the change on the output produced.

Concluding remarks

Thank you for the opportunity to provide input on the discussion paper. We look forward to the opportunity for further discussion on this issue.

Yours sincerely

A handwritten signature in black ink that reads "Diane Tate". The signature is written in a cursive, flowing style.

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ASIC Proposal	Question	Response
<p>▶ A1 We propose to release draft Regulatory Guide 000 Providing digital financial product advice to retail clients (RG 000) to assist digital advice providers in complying with the law.</p>	<ul style="list-style-type: none"> – A1Q1 Overall, is the proposed guidance helpful? If not, why not? – A1Q2 Is our proposed guidance (in Section D of the draft regulatory guide) helpful in assisting digital advice providers to provide scaled advice that is in the best interests of clients? If not, why not? 	<ul style="list-style-type: none"> – A1Q1 Yes. – A1Q2 Yes. However we consider some further examples may be useful but only if the examples do not give rise to different obligations for digital advice as there needs to be consistent treatment of both non-digital and digital advice. We also request clarification of the term ‘better position’ in relation to the provision of scaled advice (in paragraph 90). We consider this paragraph should be amended so that better position is in reference to the scope of the advice only and not the customer’s broader position. It would also be of assistance to provide further clarity in relation to some existing obligations and how they can be met in a digital advice context. It is also important for the industry to have a clear and common understanding on how best interest duty applies to the scoped digital advice. The scoping of digital advice will include input from the client, reference to instructions of the client and subject matter sought by the client as required by subsections 961B(2)(a) and 961B(2)(b) of the Corporations Act, as well as ensuring



		<p>the clients understand what is not in the scope of an advice.</p> <p>The exclusion of the subject matters that are not in scope is a required step to satisfy the last limb of the best interest duty pursuant to subsection 961B(2)(g) of the Corporations Act. This provision requires the advice provider to take any other step that, at the time the advice is provided, would reasonably be regarded as being in the best interest of the client, given the client's relevant circumstances. In our members' view, this would involve steps such as appropriate disclosure as to the limitation in the advice due to the scoped subject matter (e.g. what subject matter was not considered) and the use of the digital tool (e.g. the digital advice relies on information entered by the client into the tool).</p>
<p>▶ B1 We propose to require that a digital advice licensee has at least one responsible manager who meets the minimum training and competence standards for advisers.</p> <p>To assist existing AFS licensees that may not have a responsible manager who meets these standards, we propose a transition period of six months.</p> <p>Note: See RG 000.44–RG 000.51 of the draft regulatory guide for more details.</p>	<p>– B1Q1 Do you agree with this proposal? Please provide supporting arguments.</p>	<p>– B1Q1 We do not agree that a responsible manager should meet the minimum training and competency standards for advisers.</p> <p>We consider the law should be neutral as it applies to both non-digital and digital advice. The proposed guidance contains different obligations for responsible managers in the digital advice space than existing obligations under RG105. For example, under RG105 responsible managers do not themselves need to be 'active' advisors. Our members have advised that responsible managers within their organisations are often not themselves advisors (active or otherwise) but rather have oversight of the business.</p>



	<ul style="list-style-type: none">- B1Q2 Do you agree that, if the changes proposed in the Corporations Amendment (Professional Standards of Financial Advisers) Bill 2015 become law, at least one responsible manager should:<ul style="list-style-type: none">a) meet the new higher training and competence standards (i.e. have a degree or equivalent, pass an exam, complete a professional year and undertake continuing professional development); andb) comply with the proposed ethical standards (i.e. comply with a code of ethics and be covered by an approved compliance scheme)? - B1Q3 Are there any aspects of the proposed higher training and competence standards in the Corporations Amendment (Professional Standards of Financial	<ul style="list-style-type: none">- We do agree, however, that ‘a person’ within the licensee who has responsibility for overseeing the delivery of the digital advice be required to meet the adviser training and competency standards and this would be equivalent to what happens in a non-digital advice model. We also agree with this proposal in respect of personal advice. Ultimately it is the licensee providing the advice and that is based on a person of a senior position who meets the same professional standards and educational requirements as any other financial adviser providing personal advice. Where the advice is general advice on Tier 2 products consideration should be given to these requirements. - B1Q2 Yes. Any person providing personal advice should comply with ethical standards covered by an approved compliance scheme. (Noting comments above re inconsistency with RG105 and the guidance in terms of ‘a person’ overseeing delivery of the advice) - B1Q3 No. The person signing off on the digital advice should meet all the requirements that is expected of a financial
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	<p>Advisers) Bill 2015 that should not apply to at least one responsible manager of a digital advice licensee?</p> <ul style="list-style-type: none"> - B1Q4 Is the proposed transition period of six months long enough for existing AFS licensees to comply with the requirement to have a responsible manager who meets the minimum training and competence standards? If not, why not? - B1Q5 Please provide feedback on any costs or benefits that may apply to your business under the proposal. 	<p>adviser giving the same advice in the traditional way. (Noting comments above re inconsistency with RG105 and the guidance)</p> <ul style="list-style-type: none"> - B1Q4 We consider the six month transition may be appropriate for the recruitment of a person who meets the requirements but is too short a period for existing employees to meet the new professional standards (yet to be enacted in law) given training will need to take place. We consider 12 – 18 months is a more reasonable timeframe.
<ul style="list-style-type: none"> ▶ C1 We propose to issue guidance on the ways in which we think digital advice licensees should monitor and test the algorithms underpinning the digital advice being provided. Note: See RG 000.68–RG 000.70 of the draft regulatory guide for more details. 	<ul style="list-style-type: none"> - C1Q1 Do you think we should be more detailed in our guidance on the ways in which we think digital advice licensees should monitor and test algorithms? If so, what additional guidance should we provide? - C1Q2 Please provide feedback on any costs or savings to your business as a result of this proposed guidance. - C1Q3 Do you think we should introduce a self-certification requirement which would require digital advice licensees to certify that their algorithms have been adequately monitored and tested? - C1Q4 Should we require independent third-party monitoring and testing of algorithms? If so, in what circumstances would this be warranted? 	<ul style="list-style-type: none"> - C1Q1 We do not consider there should be more detail in the guidance in respect of the ways in which digital advice licensees should monitor and test algorithms. More prescription could pose a barrier to innovation in this area. In terms of overall requirements for monitoring and supervision they should not be inconsistent with RG104 as it covers the general principles of what is expected of a licensee. - C1Q3 No. This would add cost to Licensees. - C1Q4 No.